

**DEFENDANT'S MOTION TO EXCLUDE
PLAINTIFF'S EXPERTS**

EXHIBIT 1: Deposition of M.P. Stirling

FREEDOM COURT REPORTING

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

HAZEL M. ROBY, as Administratrix of the
Estate of RONALD TYRONE ROBY, Deceased,
Plaintiff,

COPY

vs. CIVIL ACTION NO.: 2:05CV194-T

BENTON EXPRESS, INC., et al.,
Defendants.

* * * * *

DEPOSITION OF MARY P. STIRLING, taken
pursuant to notice and stipulation on behalf
of the Defendants, at the law offices of
Beasley, Allen, Crow, Methvin, Portis &
Miles, Montgomery, Alabama, before Bridgette
Mitchell, Shorthand Reporter and Notary
Public in and for the State of Alabama at
Large, on December 13, 2005, commencing at
5:55 p.m.

FREEDOM COURT REPORTING

Page 18

1 like, metal has scraped the pavement?

2 A. Absolutely. Anything that was caused -- any
3 kind of evidence that was caused by the
4 accident we look for.

5 Q. Have you done any of those things in this
6 case?

7 A. No. I have been to the scene, but all the
8 roadway evidence was gone by the time I went
9 to the scene so I've had to rely on
10 photographs.

11 Q. When did you go to the scene?

12 A. I don't know that I have that with me.
13 Let's see. Early September. I don't happen
14 to have the exact date with me. I can get
15 that for you, if you'd like.

16 Q. That's fine. It's about, what, five months
17 after the accident?

18 A. Yes.

19 Q. And you say the roadway evidence was not
20 there anymore; is that right?

21 A. That's correct.

22 Q. Was the scene pretty much as it is today?

23 A. Yes. That intersection of 65 and 85 was

FREEDOM COURT REPORTING

Page 68

1 Q. So how do you know that these photographs
2 are ones that the city engineer took versus
3 ones that other people took?

4 A. Well, there were -- some of their employees
5 were in the scene in some of the
6 photographs, so I believe those are the ones
7 they took.

8 Q. And these were taken fairly recently after
9 the accident?

10 A. Yes.

11 Q. Were they taken on the day of the accident?

12 A. I don't know.

13 Q. Do you know whether the CD that we're
14 talking about is the set of photographs that
15 are part of the Montgomery Fatal Traffic
16 Collision Investigation?

17 A. I haven't seen that.

18 Q. You have not seen the fatal traffic and
19 collision investigation?

20 A. All I've seen is the accident report.

21 Q. So you weren't provided the full report from
22 Mr. Boone's office?

23 A. Wasn't aware there was another report.

FREEDOM COURT REPORTING

Page 69

1 Q. Is that something that you would like to
2 have?

3 A. Yes.

4 Q. If you knew that there were witness
5 statements in the report, would that be
6 significant to you?

7 A. I had the depositions from witnesses.

8 Q. You had depositions from eyewitnesses to the
9 accident?

10 A. Yes, I did.

11 Q. Well, the only eyewitnesses I'm aware of
12 that have been deposed were this afternoon.

13 A. I gave you this folder. It had them in
14 there.

15 Q. Well, I wrote down all the depositions in
16 that folder and they were Glen Clark, Don
17 Hammonds, Hazel Roby, Garland McClellan,
18 Mary Means, and David Justice. Are those
19 the ones you're talking about?

20 A. I'm sorry. I did. I looked at those at
21 this office. I sure did. I looked at those
22 depositions at this office and sat and read
23 them and made notes. That was the first day

FREEDOM COURT REPORTING

Page 70

1 I worked on the case. I came by here and
2 read those depositions.

3 MR. BOONE: I think it's not a
4 deposition. They hadn't been taken. You
5 just read my personal summary of what I
6 gathered from my investigator's interview of
7 witnesses.

8 THE WITNESS: I'm sorry. My
9 mistake.

10 Q. Is that something that you reviewed, is
11 Mr. Boone's summaries of --

12 A. Witness statements, yes.

13 Q. And is that something that's in your file?

14 A. No. I read them here at this office.

15 Q. Well, that is something, since you have
16 reviewed that, that is discoverable in this
17 case.

18 MR. BROCKWELL: And I'd ask
19 Mr. Boone that he provide those, anything
20 that Ms. Stirling has reviewed, please.

21 MR. BOONE: Well, I'm -- at this
22 point I object to it, but I'll see if I can
23 recollect what she reviewed. And we'll try

FREEDOM COURT REPORTING

Page 71

1 to -- we'll make an issue -- we'll either
2 object to produce it -- and I'll let you
3 know whether I will.

4 MR. BROCKWELL: Will you do that
5 quickly?

6 MR. BOONE: Oh, yeah.

7 MR. BROCKWELL: Do you have any
8 basis for objecting to producing materials
9 that she has reviewed in this case?

10 MR. BOONE: Yeah. Other than
11 potentially on the onset is attorney
12 work-product and privilege, my
13 interpretations of what witnesses would say.

14 MR. BROCKWELL: Well, I -- we can
15 take --

16 MR. BOONE: We don't -- you can
17 file an objection -- if I decide to say I'm
18 not going to give it to you, then you can
19 file an objection and say I should. We'll
20 deal with it swiftly.

21 Q. Ms. Stirling, as part of this Montgomery
22 Police Department Fatal Traffic Collision
23 Investigation, there are some thumbnail

FREEDOM COURT REPORTING

Page 73

1 what I'll do is mark the CD as Defendants'
2 Exhibit 8 and ask our court reporter to
3 please make a copy of the CD to attach as an
4 exhibit.

5 (Defendants' Exhibit 8 was
6 marked for identification.)

7 Q. During that line of questioning, I believe
8 we established that there are some other
9 documents you've looked at in this case that
10 are not contained in your file; is that
11 correct?

12 A. Yes.

13 Q. And it's your belief that those -- I think
14 you said that they were witness depositions;
15 is that right?

16 A. I was wrong. I guess they're witness
17 statements, I guess.

18 Q. Well, you've -- you're familiar with a
19 deposition, aren't you?

20 A. Yes. It had been a while and I worked
21 several cases since. And I was looking for
22 them and couldn't find them and then I
23 remembered that I had read them here and I

FREEDOM COURT REPORTING

Page 95

1 A. Yes.

2 Q. Is his testimony anything that would be
3 significant to you?

4 A. Yes.

5 Q. I would ask if you are provided
6 Mr. Stabler's deposition -- or Officer
7 Stabler's deposition -- or if you're
8 provided any other information in this case,
9 if it changes your opinions in any way, will
10 you provide a supplemental report of your
11 opinions?

12 A. Yes.

13 Q. Do you keep a list of documents that you are
14 provided in a case?

15 A. Not a list. I keep them all in the file.

16 Q. You keep them all except for the witness
17 statements that we talked about earlier in
18 the file?

19 MR. BOONE: Objection to form.

20 She's never had possession of them.

21 Objection to form.

22 A. I've never had possession of those. I've
23 read them here in this office and made notes

FREEDOM COURT REPORTING

Page 96

1 from them.

2 Q. Okay. So you don't consider that you've
3 been provided with those?

4 MR. BOONE: She hasn't been
5 provided with those. But go ahead.

6 A. I haven't been provided them, no.

7 Q. You have been provided access to them, but
8 you have not been allowed to leave this
9 building with copies of them; is that fair
10 to say?

11 A. That's true.

12 Q. Are there any other documents like those
13 witness statements that you have been
14 provided access to but that you do not have
15 copies of?

16 A. No.

17 MR. BOONE: Can I have a continuing
18 objection to -- I don't believe they were
19 witness statements. I think they were my
20 summaries -- of ours -- of what we expected
21 a witness to say from what they told us.
22 But I don't think a witness statement is a
23 fair characterization. I want to preserve

FREEDOM COURT REPORTING

Page 97

1 that. I might be wrong about that.

2 MR. BROCKWELL: Well, that's fine.

3 I think that Ms. Stirling has called them
4 witness depositions. I know that you've
5 stated they may not have been that. All
6 we're asking for is whatever she's looked
7 at.

8 MR. BOONE: I understand.

9 Q. And, Ms. Stirling, you are not disputing
10 that Glen Clark did indeed call the Florida
11 Highway Patrol and make a report, are you?

12 A. No.

13 Q. And when he called the Florida Highway
14 Patrol, was he doing what he should have
15 been doing as a representative of a trucking
16 company?

17 MR. BOONE: Objection to form. I
18 don't think I've hired her as an expert to
19 testify on how fast he should have did it,
20 who he should have called first, and
21 corporate policies and procedures on how to
22 report this.

23 So I'll just make you aware, ma'am,

FREEDOM COURT REPORTING

Page 112

1 read everything I gave her, so she has
2 knowledge on a lot of subjects that might
3 not be covered on her opinion because she
4 read it all.

5 Q. Let's rein this in a little bit. Okay? I
6 really don't care what your interpretation
7 of Benton Express Company policy is unless
8 you're an expert in that field. Are you?

9 A. No.

10 Q. And I really don't care what your opinions
11 are about what Craig Stephens was doing for
12 forty-eight hours that he was missing
13 because you're not an expert in that area,
14 are you?

15 A. No.

16 MR. BOONE: Object to the form.

17 Q. You're an expert -- or at least you're being
18 offered as an expert in accident
19 reconstruction, aren't you?

20 A. Yes.

21 Q. And does Benton Express company policy have
22 anything to do with your opinions here
23 today?

FREEDOM COURT REPORTING

Page 113

1 A. I've given some opinions, haven't I? I
2 mean, I don't -- what do you mean? Say that
3 again.

4 Q. Your expert opinions here today --

5 A. No.

6 Q. -- in accident reconstruction.

7 A. I've given a lot of opinions on other things
8 that weren't --

9 Q. But I'm trying to get us back to your field
10 of expertise.

11 A. Thank you.

12 Q. Okay.

13 MR. BOONE: For the record, any
14 opinion -- I don't remember any outside it,
15 but any opinion she already gave because
16 counsel asked her, I believe I have a right
17 now to ask her. But go ahead.

18 Q. Well, tell me this: What is significant to
19 your expert opinions in this case?

20 A. I think it's significant that Mr. Stephens
21 ran into the bridge abutment, went off the
22 bridge, and landed on I-65 south and slid
23 into Mr. Roby's car, and, as a result

FREEDOM COURT REPORTING

Page 114

1 Mr. Roby and Mr. Stephens are dead.

2 Q. And as part of -- part of what you stated
3 here is based on other evidence; right?

4 A. Yes.

5 Q. And it's based on photographs you've looked
6 at; is that correct?

7 A. Yes.

8 Q. And is it based on anything else that you've
9 done besides look at photographs?

10 A. Yeah. It's based on the statements of the
11 eyewitnesses --

12 Q. All right.

13 A. -- that I read.

14 Q. And tell me what else.

15 A. And the police report.

16 Q. Anything else?

17 A. Basically, that's it.

18 Q. Okay. And so I just want to clear things up
19 here, if we can. That you are being offered
20 as an expert in accident reconstruction; is
21 that right?

22 A. Yes.

23 Q. And you have reached opinions as an expert

FREEDOM COURT REPORTING

Page 115

1 on how the accident that is the subject of
2 this case occurred; is that correct?

3 A. Yes.

4 Q. And those opinions are contained in the
5 disclosure of your opinions that have been
6 filed in this case; is that correct?

7 A. Yes.

8 Q. Do you have any opinions that are not
9 contained in these disclosures?

10 A. No.

11 Q. And I will go ahead and mark them for us so
12 that we know what we're talking about.

13 A. Do I have any opinions?

14 Q. Any expert opinions.

15 A. No.

16 Q. I don't want to know what you think about my
17 tie or my haircut or anything else. We're
18 going to talk about accident reconstruction.
19 Okay?

20 A. Thank you.

21 Q. All right, ma'am. I'm going to mark what is
22 entitled the Initial Preliminary Report of
23 Opinions by M.P. Stirling as Defendants'

FREEDOM COURT REPORTING

Page 130

1 of tire marks, and there just -- there were
2 none.

3 Q. Is there anything else you base your opinion
4 that Mr. Roby was on I-65?

5 A. Also the officer's police report. They were
6 on the scene there when everything was
7 fresh.

8 Q. What part of their police report are you
9 relying upon?

10 A. Upon the fact that they looked at all the
11 evidence and they determined that Mr. Roby
12 was on I-65 south.

13 Q. So you're talking about the conclusions they
14 reached?

15 A. (Witness nods head.)

16 Q. If you could answer out loud, please.

17 A. Yes.

18 Q. But you have not seen the full police
19 report, have you?

20 A. No, I haven't.

21 Q. And so you have not seen all of the evidence
22 that was part of the police investigation?

23 A. My conclusions are based on what I was

FREEDOM COURT REPORTING

Page 131

1 given, the materials that I was given.

2 Q. And specifically, your conclusions, as it
3 relates to those based upon the police
4 report, are that you based your opinions on
5 the opinions of the investigating police
6 officers; is that correct?

7 A. Yes.

8 MR. BOONE: Let me object to form.
9 I think she said she's reviewed the police
10 report, not just his opinions.

11 MR. BROCKWELL: Well, I'll
12 respectfully disagree with you and ask you
13 again please not try and testify for your
14 witness.

15 Q. Would it be significant to you that there
16 are a number of witness statements in the
17 full police report?

18 A. It may be.

19 Q. Was that -- are those witness statements
20 something that you would have liked to have
21 read when forming your own opinions?

22 A. Yes.

23 Q. And in cases where you have disagreed with

FREEDOM COURT REPORTING

Page 132

1 the conclusions reached by the investigating
2 police officers, have you looked at all of
3 the evidence?

4 A. Yes.

5 Q. For instance, you haven't just read the
6 police officer's opinions and concluded that
7 they're wrong without looking at any more
8 evidence, have you?

9 A. No.

10 Q. It's important for you to look at all the
11 evidence the police officer looked at, isn't
12 it?

13 A. If I can have access to it, yes.

14 Q. Right. And that's the only way that you
15 know that you can understand everything that
16 the police officer may be basing his or her
17 opinions on?

18 A. Well, this is -- to me, this is a very
19 clear-cut case. The photographs show
20 absolutely no evidence of an impact
21 occurring prior to the truck hitting that
22 bridge. And the damage to Mr. Roby's
23 vehicle is just, to me, very, very plain

FREEDOM COURT REPORTING

Page 134

1 MR. BOONE: And I'll reiterate --
2 and for the record, I don't know if you want
3 to mark that, but I would like her to have
4 everything. I would have thought you had.
5 And we must -- Dora must not have it. I
6 would like -- are you going to mark that?
7 Because --

8 MR. BROCKWELL: We've already given
9 it to you.

10 MR. BOONE: No. I said, are you
11 going to mark that, is what I said.

12 MR. BROCKWELL: No.

13 MR. BOONE: I didn't ask you
14 whether you gave it to me or not.

15 MR. BROCKWELL: No.

16 Q. I'm just asking if you had received
17 everything that's in the Montgomery Police
18 Department Fatal Traffic Collision
19 Investigation. I think we've established
20 that you did not, ma'am; is that correct?

21 A. That's correct.

22 Q. And the only portion of it, as far as you
23 know, that you have received is the accident

FREEDOM COURT REPORTING

Page 135

1 report part of it; is that correct?

2 A. That's correct.

3 Q. And when we were talking about accident
4 report, that's the Alabama Uniform Traffic
5 Accident Report; is that correct?

6 A. Yes.

7 Q. Now, state troopers, when there's a fatality
8 involving motor vehicles, complete a traffic
9 homicide report, don't they?

10 A. If it fits the criteria.

11 Q. Do you have any estimate as to the
12 percentage of cases that they will complete
13 a traffic homicide report in?

14 A. No.

15 Q. What criteria is it for -- what sort of
16 triggers them doing a traffic homicide
17 report?

18 A. The criteria is if someone dies through no
19 fault of their own, if there are three or
20 more fatalities involved in the accident, or
21 if there's a school bus with injuries or
22 fatalities. It may be more now, but that's
23 what it was four years ago.

FREEDOM COURT REPORTING

Page 136

1 Q. And when you worked for the state troopers,
2 at any point did you perform traffic
3 homicide investigations?

4 A. Yes.

5 Q. And did you generate traffic homicide
6 reports for the Alabama State Troopers while
7 you were doing that?

8 A. Yes.

9 Q. What all was involved in creating those
10 reports, the traffic homicide reports?

11 A. Well, investigating the accident scene,
12 documenting all the evidence at the scene,
13 documenting the vehicles and the evidence on
14 the vehicles, background checks on the
15 drivers for prior violations or histories,
16 particularly DUI histories where someone
17 died as a result of a DUI death.

18 Whatever -- you know, each investigation
19 leads you down a different road, so you just
20 gather all the information you can gather.

21 Q. And would talking to witnesses to the
22 accident be part of that?

23 A. Oh, absolutely.

FREEDOM COURT REPORTING

Page 137

1 Q. Would inspecting the vehicles involved in
2 the accident be part of the investigation?

3 A. Yes.

4 Q. Have you actually inspected Mr. Ronald
5 Roby's car that was involved in this
6 accident?

7 A. No.

8 Q. You only looked at photographs?

9 A. Yes.

10 Q. And those were photographs taken by someone
11 other than you; is that correct?

12 A. Yes.

13 Q. Have you inspected the tractor-trailer that
14 Craig Stephens was driving?

15 A. No.

16 Q. But you have looked at photographs of it as
17 well?

18 A. Yes.

19 Q. And, again, those are photographs taken by
20 someone other than you?

21 A. Yes.

22 Q. That next opinion I want to ask you about is
23 that you opine that Craig Stephens was

FREEDOM COURT REPORTING

Page 138

1 operating his vehicle in excess of 59 miles
2 per hour as he went over the barrier guard.
3 What do you base that opinion on?

4 A. Witnesses who said that he was -- some said
5 he was doing 60 to 65, some said 80.

6 Q. Was there any reason that you phrased it
7 like that, in excess of 59 miles per hour?

8 A. Well, the initial critical speed of the
9 curve was 59 when I was using the radius;
10 that was approximate given to me by the city
11 engineer's office. And then we got the
12 radius of the curve from the Alabama DOT,
13 the actual plans, and it was low. The
14 radius was a little bit larger, so that
15 lowered the speed for that curve. But at
16 that time, that's what I was basing that on.
17 And the witness statements that said 60 or
18 better.

19 Q. Okay. So part of the basis of the 59 miles
20 per hour was the critical speed you
21 determined for that curve; right?

22 A. Yeah.

23 Q. And I think we've already determined earlier

FREEDOM COURT REPORTING

Page 139

1 that the critical speed for that curve is
2 irrelevant to this case; is that right?

3 A. Yes.

4 Q. And you have -- I think you also testified
5 that it's impossible to make a calculation
6 as to Mr. Stephens' speed for just going
7 straight over the barrier; is that correct?

8 A. Yes.

9 Q. And so removing the critical speed for the
10 curve from the equation, what is the in
11 excess of 59 miles per hour based on?

12 A. The witnesses.

13 Q. And are those the witness statements or
14 witness depositions that you read here in
15 Mr. Boone's office but do not have a copy
16 of?

17 A. Yes.

18 MR. BOONE: Objection to form.

19 Q. And while we're on that, could you look in
20 your notes that you've referred to a few
21 times today and tell me the names of each
22 eyewitness whose statement or deposition you
23 read?

FREEDOM COURT REPORTING

Page 140

1 MR. BOONE: Objection to form.

2 A. Bridgette Harris, Andrew Davis, Corporal
3 Green, Ladon Dansby, Richard Patterson,
4 Stephen Hornsby, Michael Boozer, Jermale
5 Ayers, Julie Pollard, Johnny Pollard, and
6 Lisa Warr.

7 Q. There was an actual statement made by
8 Corporal Green in the materials that you
9 read?

10 MR. BOONE: Objection to form. For
11 the record, that same objection. I don't
12 remember if it was my summary, the
13 investigator's summary, or what it was. You
14 keep using the term, so I'd just like to
15 have a continuing objection, a statement or
16 a deposition.

17 MR. BROCKWELL: And I understand.
18 I'll give you a standing objection to what
19 we call it, because frankly I don't know
20 what they are.

21 MR. BOONE: I don't recall what it
22 is either.

23 MR. BROCKWELL: All I know is that

FREEDOM COURT REPORTING

Page 141

1 she's called it a witness deposition.

2 MR. BOONE: Right. I don't have an
3 objection to that. I just want to make sure
4 we're not agreeing to that just because
5 that's the term you all use.

6 MR. BROCKWELL: Right.

7 A. Well, I misspoke when I said deposition.

8 MR. BOONE: And if it is, then, you
9 know, we're going to give you whatever we
10 give you and we'll know what it is.

11 I think he asked you a question. I
12 don't remember what it is.

13 A. I took it at the same time as I took the
14 other notes and between two of the other
15 witnesses, so I'm assuming that it was a
16 statement that was in there also.

17 Q. Okay. As far as you know from your notes
18 and from your memory, the statement --
19 that's my term -- of Corporal Green was the
20 same format as the statements of the other
21 witnesses?

22 A. Yes.

23 Q. Did you ask for copies of these witness

FREEDOM COURT REPORTING

Page 142

1 statements?

2 A. I was told -- I asked if there were witness
3 statements and I was told that I could come
4 by here and read them, but I couldn't get a
5 copy.

6 MR. BOONE: I don't remember.

7 Q. Now, one of your opinions is that the truck,
8 meaning the truck driven by Craig Stephens,
9 collided with Ronald Roby's vehicle; is that
10 correct?

11 A. Yes.

12 Q. I don't think there's any dispute that there
13 was a collision between the two vehicles. I
14 think that's pretty clear from all the
15 evidence here. But my question about your
16 opinion is, do you mean anything other than
17 that the two vehicles collided with each
18 other by that opinion?

19 A. Well, there had been some speculation that
20 it fell on top of Mr. Roby, but it collided
21 into -- they collided into one another.

22 Q. So by stating that opinion, it is your
23 opinion that rather than Craig Stephens'